

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

EMPIRICAL FOODS, INC.

Plaintiff and Counter-
Defendant,

vs.

PRIMUS BUILDERS, INC.,

Defendant,
Counterclaimant, and
Third-Party Plaintiff,

vs.

SWISSLOG LOGISTICS, INC.,

Third-Party Defendant.

CASE NO. 8:19-CV-00457

**MOTION FOR LEAVE TO FILE
EVIDENCE IN SUPPORT OF REPLY IN
SUPPORT OF EMPIRICAL FOODS,
INC.'S OBJECTION TO THE
MAGISTRATE'S ORDER AWARDING
SANCTIONS**

Plaintiff empirical foods, inc. ("empirical"), pursuant to 28 U.S.C. § 636(b)(1)(C) and NECivR 72.2(b)(1), respectfully seeks leave to file evidence in support of its Reply in Support of empirical's Objection to the Magistrate's Order Awarding Sanctions ("Reply"). empirical seeks to submit a Declaration of David D. Pope and three exhibits to that Declaration.¹

Plaintiff seeks to submit these new exhibits in response to the Declaration of Joshua S. Weiner and Exhibits A-D submitted with Mr. Weiner's Declaration. (ECF #165-1; 165-2; 165-3; 165-4; 165-5.) Swisslog Logistics, Inc. ("Swisslog") submitted this declaration and corresponding exhibits in support of its Brief in Opposition to Objections to Order on Sanctions. (ECF #165.)

¹ empirical also has filed a separate index of evidence in support of its reply brief with these same materials attached.

Good cause exists for the Court to allow empirical to submit its own declaration and exhibits in support of its Reply. Swisslog submitted evidence that was not previously part of the Court record, and empirical requires the submission of its own evidence to rebut Swisslog's evidence and the arguments for which Swisslog's declaration and exhibits were submitted.

In addition, Defendants have relied on emails that do not provide the entire context of the communications exchanged between the parties on the issue of a potential Attorneys' Eyes Only protective order in this matter, which is relevant to the issue of the sanctions awarded by the Court against empirical. Certain emails on which they rely omit subsequent responses or attachments. The proposed Declaration and exhibits attach the subsequent responses and the omitted attachment.

Because granting the requested leave will not cause prejudice to any party, and denial of this Motion will unfairly prejudice Plaintiff, the Motion should be granted.

WHEREFORE, empirical foods, inc. respectfully requests the Court enter an Order allowing empirical to file the Declaration of David D. Pope and related exhibits with its Reply in Support of empirical's Objection to the Magistrate's Order Awarding Sanctions.

Respectfully submitted this 26th day of May, 2021.

Dated: May 26, 2021

EMPIRICAL FOODS, INC.,
Plaintiff/Counter-Defendant

By: s/ John V. Matson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 26th day of May, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which sent notification of such filing to all CM/ECF participants.

s/ John V. Matson

John V. Matson